

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Attorney Docket No.: 2005.115US01

Eric John Gandras

Confirmation No.: 7096

Application No.: 10/716,853

Examiner: Phillip A. Gray

Filed: November 20, 2003

Group Art Unit: 3767

For: PELVIC ARTERIAL CATHETER

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PATENT TERM ADJUSTMENT LETTER OF CANDOR AND GOOD FAITH

Mail Stop Issue Fee  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The attention of the Office is directed to the Patent Term Adjustment reported by the Office for the instant case. The reported PTA of 1297 days is thought by Applicant to be at least thirty days shorter than appropriate, for the reasons presented below.

First, analysis reveals a discrepancy based on the calculation of Patent Term Adjustment related to filing of a non-compliant appeal brief on August 13, 2007.

- 37 C.F.R. 1.704(c)(7), provides that the period of adjustment shall be reduced where applicant submits a reply having an omission, for the period beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed.

Under 37 C.F.R. 1.709(c)(7) the Appeal Brief that was designated non-compliant could be considered to be a reply having an omission. It is unclear, however, whether the rule requires this interpretation. If the rule is interpreted in this way, the period of adjustment should have been reduced for the period extending from the Brief's filing date until September 17, 2007 when a corrected Brief was filed. This would result in a reduction of term of 35 days.

Second, analysis reveals another discrepancy related to the Office Action mailed October 8, 2009.

- 37 C.F.R. 1.702(a)(3), provides that the PTO must act on an application not later than 4 months after the date of a decision by the BPAI under 35 USC 134 or 135 where at least one allowable claim remains in the application. The period of adjustment begins on the day after the date that is 4 months after the date of the final decision by the Board of Patent Appeals and Interferences under 35 USC 141 and ending on the date of mailing of either an action under 35 USC 132 or a notice of allowance, whichever occurs first. See 35 USC 154(b)(1)(A)(iii); 37 CFR 1.702(a)(3); 1.703(a)(5).

The BPAI issued a decision May 28, 2009. The Office Action was not mailed until October 8, 2009. Accordingly, Applicant should have been credited 10 days for a period of adjustment under 37 C.F.R. 1.702(a)(3).

Third, the Patent Office has not yet applied the three year pendency guarantee of 35 U.S.C. § 154(b)(1)(B) since the issue date of the patent is not yet known. Applicant expects that upon calculation based on the three year pendency guarantee additional patent term adjustment of approximately 399 days will be added based on an estimated issue date of October 12, 2010 and the above discussed discrepancies.

Applicant respectfully requests that the Office verify and confirm the applied Patent Term Adjustment before issuance of the patent.

Respectfully submitted,



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*Please grant any extension of time necessary for entry; charge any fee due to Deposit Account No. 16-0631.*